

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
VICTOR BERRELLEZA-VERDUZCO,  
  
Defendant.

Case No. CR12-62RSL

ORDER DENYING  
DEFENDANT'S MOTION  
FOR COMPASSIONATE  
RELEASE

This matter comes before the Court on defendant's *pro se* "Motion for Reduction of Sentence" pursuant to 18 U.S.C. § 3582(c)(1)(A). Dkt. # 1507. Having reviewed the memoranda of the parties and the record contained herein, the Court finds as follows:

**I. PROCEDURAL MOTIONS**

As an initial matter, the Court finds compelling reasons justify sealing defendant's records (Dkt. # 1512). The government's motion to seal (Dkt. # 1511) is accordingly GRANTED. The government's motion to file an overlength brief (Dkt. # 1509) is also GRANTED.

**II. BACKGROUND**

Defendant is a 31-year-old inmate currently incarcerated at the Federal Correctional Institution ("FCI") Victorville in California. On April 23, 2013, defendant pleaded guilty to conspiracy to distribute controlled substances, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846; conspiracy to engage in money laundering, in violation of 18 U.S.C. §§ 1956(h), 1956(a)(1)(A)(I), and 1956(a)(1)(B)(I); conspiracy to interfere with commerce by

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1 robbery, in violation of 18 U.S.C. § 1951; and conspiracy to possess firearms in furtherance of a  
 2 drug trafficking crime, in violation of 18 U.S.C. § 924(o). See Dkt. # 856. At the sentencing  
 3 hearing on September 13, 2013, defendant moved to withdraw his plea and for new counsel,  
 4 which the Court denied. With defendant's consent, the Court proceeded with sentencing and  
 5 sentenced defendant to 20 years in custody and 60 months of supervised release. Dkt. # 1099.  
 6 Defendant appealed the Court's order denying his motion to withdraw his guilty plea and his  
 7 request to substitute counsel, and the Ninth Circuit affirmed the Court's order. United States v.  
 8 Berrelleza-Verduzco, 590 F. App'x 707 (9th Cir. 2015) (mem.). Defendant is currently  
 9 scheduled for release from the custody of the Federal Bureau of Prisons ("BOP") on July 31,  
 10 2029. Dkt. # 1510.

11 On March 5, 2021, defendant filed the instant motion, seeking compassionate release  
 12 under 18 U.S.C. § 3582(c) based on the conditions he alleged he endured over the previous year,  
 13 including his contracting of COVID-19. Dkt. # 1507.

### 14 **III. LEGAL FRAMEWORK**

15 The compassionate release statute provides narrow grounds for defendants in  
 16 "extraordinary and compelling" circumstances to be released from prison early. See 18 U.S.C.  
 17 § 3582(c). The First Step Act of 2018 amended the procedural requirements governing  
 18 compassionate release. See id. Prior to the First Step Act's passage, only the Director of the  
 19 BOP could bring motions for compassionate release. The Director rarely filed such motions.  
 20 See, e.g., United States v. Brown, 411 F. Supp. 3d 446, 448 (S.D. Iowa 2019). Congress  
 21 amended the statute to allow defendants to directly petition district courts for compassionate  
 22 release. As amended, 18 U.S.C. § 3582(c)(1)(A) states in relevant part,

23 (c) Modification of an imposed term of imprisonment.—The court may not  
 24 modify a term of imprisonment once it has been imposed except that—

25 (1) in any case—

26 (A) the court, upon motion of the Director of the Bureau of  
 27 Prisons, or upon motion of the defendant after the defendant  
 28 has fully exhausted all administrative rights to appeal a failure  
 of the Bureau of Prisons to bring a motion on the defendant's

1                   behalf or the lapse of 30 days from the receipt of such a  
 2                   request by the warden of the defendant's facility, whichever  
 3                   is earlier, may reduce the term of imprisonment (and may  
 4                   impose a term of probation or supervised release with or  
 5                   without conditions that does not exceed the unserved portion  
 6                   of the original term of imprisonment), after considering the  
 7                   factors set forth in section 3553(a) to the extent that they are  
 8                   applicable, if it finds that—

9                   (i) extraordinary and compelling reasons warrant such  
 10                  a reduction; . . .

11                  (ii) . . .

12                  and that such a reduction is consistent with the  
 13                  applicable policy statements issued by the Sentencing  
 14                  Commission[.]

15           As an initial matter, before the Court can consider the merits of defendant's motion, it  
 16           must determine whether he has met the statutory exhaustion requirement for compassionate  
 17           release. See 18 U.S.C. § 3582(c)(1)(A). Defendant bears the burden of establishing this  
 18           requirement. See, e.g., United States v. Van Sickle, No. CR18-0250JLR, 2020 WL 2219496, at  
 19           \*3 (W.D. Wash. May 7, 2020) (collecting cases). The government asserts that defendant has not  
 20           met this preliminary burden, Dkt. # 1510 at 11, and the Court agrees. Defendant alleges merely  
 21           that he made a request and waited over 30 days for the warden's response. See Dkt. # 1507 at 3.  
 22           Defendant does not specify when he made the alleged request, and he did not attach a copy of  
 23           the request. See id. The government states that it "has inquired of BOP, and BOP has no record"  
 24           of defendant's alleged request. Dkt. # 1510 at 11. Defendant did not file a reply to the  
 25           government's response, and the Court concludes that defendant has failed to establish that he  
 26           has satisfied the exhaustion requirement. Because defendant has not met this threshold  
 27           requirement, the Court lacks authority to grant relief under § 3582(c)(1)(A). See United States v.  
 28           Fuentes, 834 Fed. App'x 414 (9th Cir. 2021) (mem.) ("A court may not excuse a defendant's


1 failure to comply with a statutory exhaustion requirement.”). Accordingly, defendant’s motion  
2 must be DENIED.<sup>1</sup>

#### 3 IV. CONCLUSION

4 For all the foregoing reasons, defendant’s motion for compassionate release (Dkt. # 1507)  
5 is DENIED without prejudice to re-filing once he complies with the exhaustion requirement set  
6 forth in 18 U.S.C. § 3582(c)(1)(A).<sup>2</sup> Before the Court will consider the merits of defendant’s  
7 motion, he must show that (1) he “has fully exhausted all administrative rights to appeal a  
8 failure of the [BOP] to bring a motion on [his] behalf,” or (2) thirty (30) days have lapsed since  
9 the receipt of his compassionate release request by the warden of FCI Victorville. 28 U.S.C.  
10 § 3582(c)(1)(A).

11 IT IS SO ORDERED.

12  
13 DATED this 29th day of March, 2021.

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15 Robert S. Lasnik  
16 United States District Judge

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23 <sup>1</sup> To the extent that defendant raises an Eighth Amendment claim challenging the conditions of  
24 his confinement, see Dkt. # 1507 at 5, the Court declines to order his release on Eighth Amendment  
25 grounds based on the procedural posture of defendant’s request for relief. See United States v. Numann,  
26 No. 3:16-CR-00025-TMB, 2020 WL 1977117, at \*4 (D. Alaska Apr. 24, 2020) (Burgess, J.) (An Eighth  
27 Amendment claim “relating to the manner and conditions of confinement—[is] not properly brought in a  
28 motion for compassionate release [under § 3582(c)(1)(A)] and this Court does not have jurisdiction to  
consider [it].”).

<sup>2</sup> The government’s motion to seal (Dkt. # 1511) and motion to file an overlength brief (Dkt.  
# 1509) are also GRANTED.